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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,350

04/18/2006

Masayuki Yoshikawa

VX062734 PCT

7216

23400 7590 03/22/2010

POSZ LAW GROUP, PLC
12040 SOUTH LAKES DRIVE
SUITE 101
RESTON, VA 20191

EXAMINER

PESELEV, ELLI

ART UNIT

PAPER NUMBER

1623

MAIL DATE

DELIVERY MODE

03/22/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the European Patent No. 1 318 201 A in combination with Bailey et al (U.S. Patent No. 6,780,442) and Rahbar et al (U.S. Patent No. 6,605,642).

The European Patent discloses the claimed anthocyanin but does not disclose a method of inhibiting the formation of advanced glycation end products (AGE) and aldose reductase activity in a human in need thereof.

Bailey et al disclose that orally administered anthocyanins are beneficial for treating diabetes (column 1, lines 36-40).

Rahbar et al disclose increased glycation in diabetic patients (column 1, lines 33-37).

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Therefore, a person having ordinary skill in the art at the time of the claimed invention would have been motivated to administer anthocyanins to a diabetic patient. Since the human which is in need of inhibiting AGE and aldose reductase activity includes a diabetic patient, the claimed methods are deemed prima facie obvious over the cited prior art.

Applicant's arguments filed December 15, 2009 have been fully considered but they are not persuasive.

Applicant contends that the cited prior art does not provide reasonable expectation and can provide no inherent teaching concerning inhibiting aldose reductase activity in a human in need thereof by administering anthocyanins to the human. Applicant also contends that simply because a human has diabetes does not require or necessitate that the human also suffers from the formation of advanced glycation end products or aldose reductase activity. Applicant further contends that the activity of inhibiting advanced glycation end products or inhibiting aldose reductase activity is useful for diseases other than in prophylaxis and treatment of diabetes. These arguments have not been found persuasive. The present claims read on administering anthocyanins to a human in need of inhibiting formation of advanced glycation end products and inhibiting aldose reductase activity. On page 12 of the specification, lines 2-5, it is stated that an inhibitor of AGE and aldose reductase is very useful as a preventive and therapeutic agent against various diabetic complications. Thus, the terminology in the present claims "a human in need thereof" encompasses a human having diabetes. Since based on the teaching by the cited prior, the

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administration of anthocyanins to a diabetic patients would have been prima facie obvious to a person having ordinary skill in the art at the time of the claimed invention for the reasons stated above, the claimed methods are still deemed prima facie obvious over the cited prior art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elli Peselev whose telephone number is (571) 272-0659. The examiner can normally be reached on 8.00-4.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Jiang can be reached on (571) 272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Elli Peselev
/Elli Peselev/
Primary Examiner, Art Unit 1623